

Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject: Egg grading, handling, and labeling
Adm. Code Reference: ATCP 88, 70, and 75
Rules Clearinghouse #: Not assigned
DATCP Docket #: 13-R-05

Rule Summary

This proposed rule comprehensively revises ATCP 88, Wis. Adm. Code, to clarify the regulatory requirements applicable to egg producers and egg handlers. The proposed rule makes minor revisions to ATCP 70 and 75 and moves primary egg regulation to ATCP 88, thus limiting the need for egg business operators to consult multiple chapters of rules. The rule consolidates regulations regarding licensing egg processing and sales, and egg facilities, equipment and utensils, egg handling operations and packing and labeling requirements in ATCP 88. The rule implements 2013 Wisconsin Act 245, by eliminating the requirement for small-scale egg producers to hold a food processing plant license when selling eggs at a farmers' market, on an egg route, or at the egg producer's farm. The proposed rule removes obsolete provisions in the existing rule and incorporates explanatory text to improve rule clarity. The rule spells out federal registration requirements that must also be met by some egg producers and egg handlers.

Small Businesses Affected

The rule will impact egg producers and egg handlers of all sizes. This rule is expected to have a positive impact on small-scale egg producers with flocks of not more than 150 birds as it removes the requirement to obtain and pay the license fee for a food processing plant license for selling eggs to consumers on the site where the eggs are produced, at farmers' markets, and on egg sales routes. It assists all egg-related businesses by clarifying and consolidating existing regulatory requirements specific to egg production establishments, making it easier for businesses to understand and meet critical requirements to protect the public from foodborne illness. Some licensed egg handling operations may need to upgrade facilities, e.g. sinks, walls, temperature monitoring devices, in order to meet the requirements in the rule. The rule does not increase license fees.

Reporting, Bookkeeping and other Procedures

The rule does not require any additional reporting or bookkeeping procedures for small producers. The rule incorporates registration requirements for large producers, as required under federal law. The rule also requires Wisconsin egg handlers who receive eggs from producers who own 3,000 or more laying birds to maintain records showing that the producers are registered as required under federal egg safety rule with the Food

and Drug Administration (FDA). The FDA requires producers with 3,000 or more laying birds to register and meet federal requirements to reduce the risk of *Salmonella enteritidis* (SE) contamination, which presents a significant food safety hazard associated with eggs. Registration allows FDA to identify and inspect these large-scale egg producers. By requiring egg handlers to maintain documentation demonstrating compliance with FDA registration requirements, Wisconsin inspectors will be able to quickly and efficiently ensure that eggs entering the marketplace from these large-scale egg producers have implemented SE reduction practices consistent with federal law.

Professional Skills Required

The proposed rule does not require small businesses to acquire any new professional skills.

Accommodation for Small Business

The proposed rule creates a new exemption from food processing plant licensing for egg producers with not more than 150 laying birds who sell eggs at farmer's markets, on egg-sales routes or at the location where the eggs are produced.

Conclusion

The provisions in this proposed rule will benefit Wisconsin's egg production industry.

This rule will not have a significant adverse effect on "small business" and is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Dated this 1st day of May, 2014.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Steven C. Ingham
Steven C. Ingham, Administrator,
Division of Food Safety

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

☒ Original ☐ Updated ☐ Corrected

2. Administrative Rule Chapter, Title and Number

ATCP 88-Egg Grading, Handling and Labeling; ATCP 70, Food Processing Plants; and ATCP 75, Retail Food Establishments

3. Subject

Regulation of Egg Grading, Handling, Packaging, Labeling, and Retail Sales, and affecting small business.

4. Fund Sources Affected

☐ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG ☐ SEG-S

5. Chapter 20, Stats. Appropriations Affected

129

6. Fiscal Effect of Implementing the Rule

☐ No Fiscal Effect ☐ Increase Existing Revenues ☐ Increase Costs
☒ Indeterminate ☐ Decrease Existing Revenues ☐ Could Absorb Within Agency's Budget
☐ Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

☒ State's Economy ☒ Specific Businesses/Sectors
☐ Local Government Units ☐ Public Utility Rate Payers
☒ Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes ☒ No

9. Policy Problem Addressed by the Rule

This rule modifies ATCP 88, Wis. Adm. Code, related to egg grading, handling and labeling; ATCP 70, Wis. Adm. Code, related to food processing plants; and ATCP 75, Wis. Adm. Code, related to retail food establishments. The rule involves a comprehensive re-write of ATCP 88 to provide clarity for determining the regulatory requirements that an egg producer or egg handler must meet. Minor revisions in ATCP 70 and 75 defer primary egg regulation to ATCP 88. By setting forth requirements for licensing, facilities, equipment and utensils, egg handling operations, packing and labeling, recordkeeping and recall planning in ATCP 88, the rule practically eliminates the need for a small egg-business operator to read multiple chapters of rules. The rule will help businesses by eliminating the requirement for small-scale egg producers to hold a food processing plant license when selling eggs at a farmers' market, on an egg route, or at the egg producer's farm. The rule removes obsolete provisions in the existing rule. The rule provides explanatory text to improve rule clarity and spells out federal registration requirements which must also be met by some egg producers and egg handlers.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

The Department contacted Wisconsin egg producers, including those represented by the Wisconsin Poultry and Egg Industries Association. We contacted an officer of the Wisconsin Association of Local Health Departments and Boards (WALHDAB) to solicit information regarding local health department agents who carry out retail food establishment oversight.

11. Identify the local governmental units that participated in the development of this EIA.

Some local governmental units operate under contract with DATCP to inspect retail food establishments, which includes egg producers selling eggs directly to consumers on egg sales routes and at farmers' markets. WALHDAB was consulted as a representative of local government as part of developing this EIA. However, since the rule will not change current requirements for retail food establishment licensing, there is no impact on local governmental units.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be

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Incurred)

Very small egg producers: This rule will benefit small egg producers as it removes the requirement to obtain a food processing plant license to sell eggs to consumers at farmers' markets and on egg sales routes. Under the Wisconsin Food Code, any food sold at a licensed retail food establishments, which includes farmers' markets and egg sales routes, must be acquired from an approved source. To be considered an approved food source, the food effectively must come from a licensed food processing plant. This rule will no longer require egg producers with flocks of not more than 150 birds to obtain a food processing plant license in addition to a retail food establishment license. Annual food processing plant licenses fees for small establishments are \$95. Under the rule, very small egg producers will have to label eggs and maintain eggs for sale at a temperature of 41 degrees or less.

Egg producers as a whole: The rule does not include new regulatory requirements, but consolidates and clarifies requirements that were previously located in multiple administrative rule chapters in one rule, making it easier for egg producers to meet important food safety regulations. Some licensed egg handling operations may need to upgrade facilities, e.g. sinks, walls, temperature monitoring devices, in order to meet requirements in the rule. The rule will not increase licensing fees.

Local governmental units: This rule is not anticipated to have a fiscal impact on local government units. Forty-four local health agents issue retail food establishment licenses and conduct retail food establishment inspections under contract with DATCP. The rule exempts small egg producers from food processing plant licensing if they sell eggs directly to consumers at the location where the eggs are laid, at a farmers' market, or on an egg sales route. However, food processing plant licenses are administered by DATCP and this exemption will not impact local governmental units. DATCP also issues retail food establishment licenses and conducts retail food establishment inspections in jurisdictions not covered by a local health agent contract and the rule will have no impact on local governmental units in these jurisdictions. The rule may encourage some very small egg producers to seek a retail food establishment license to sell eggs directly to consumers. The number of very small egg producers who may seek licensure cannot be determined.

Public Utility Rate Payers: The rule will have no impact on public utility rate payers.

State's economy: According to USDA, egg production is growing in Wisconsin. Wisconsin produced 1.48 billion eggs in 2013, representing an 8 percent increase in egg production from 2012. Wisconsin also increased its rank nationally one place to become the 17th largest egg producer in the country in 2013. Simplified regulations will support this important contribution to the state's agricultural economy.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The rule clarifies existing requirements for egg producers by consolidating regulations related to the safe handling and proper labeling of eggs into one rule. The rule will make it easier for egg production businesses to meet requirements that are designed to protect public health and prevent foodborne illness outbreaks. The rule exempts very small egg producers from acquiring two licenses to sell eggs directly to consumers.

14. Long Range Implications of Implementing the Rule

These rules will reduce regulatory requirements faced by businesses while still protecting the public from foodborne illness. Many consumers prefer to buy locally-produced foods, in particular directly from a farmer. The rule exemptions will increase access to locally-produced eggs. Nevertheless, eggs are a potentially-hazardous food, meaning they must be handled properly and stored at a proper temperature to avoid contamination and growth by pathogens. Salmonella Enteritidis (SE) is the most common pathogen associated with eggs and the risk of SE infection is increased when proper refrigeration is not practiced. The rule retains refrigeration requirements for egg producers exempted from food processing plant licensing. The rule consolidates regulations related to eggs, making it easier for egg producers to meet requirements.

15. Compare With Approaches Being Used by Federal Government

In general, rules designed to ensure egg safety and consistent quality and marketing of eggs cover activities related to flock health and farm sanitation; egg grading, sanitation, temperature control, packaging, and labeling at egg processing

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facilities; and transportation, handling and storage of eggs for the retail sale. Federal egg regulations consist of several rules involving two agencies, each responsible for different activities designed to promote egg safety and consistent egg quality and marketing. One objective of this rulemaking process is to clearly differentiate Wisconsin's requirements and those of federal agencies in regulating egg packaging and sales.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois requires egg producers to hold a limited or full license, costing \$15 and \$50, respectively. Illinois also assesses a per-case inspection fee on eggs sold in-state. Egg producers are not required to hold an Illinois egg license to sell nest-run eggs from the producer's flock to household consumers for the consumers' own personal use. The eggs must be sold on the premises where the flock is located. Producers who sell eggs to licensed grading stations also do not require an Illinois egg license. A limited producer-dealer egg license is required for producers selling graded eggs from their own flock of fewer than 3,000 birds when the eggs are sold off the premises from where the flock is located.

Iowa requires handlers of candled and graded eggs to hold a license, the cost of which is based on the number of eggs sold in a "snapshot" month. The fee ranges from \$15 for egg handlers who purchase or handle fewer than 125 cases in the month of April of a calendar year to \$250 for those who purchase or handle 10,000 cases or more during that month. Producers who sell eggs exclusively from their own flocks directly to handlers, or to consumers, are exempt from licensing.

Michigan does not require a license for selling eggs obtained from flocks of fewer than 3,000 laying hens if the sales are made directly to consumers. Any other sales, including those transacted with consumers by internet, mail, or consignment, are only allowed if the seller holds a license costing \$175.

Minnesota assesses an annual inspection fee, based on number of eggs sold, which ranges in cost from \$12.50 to \$312. A food handler license is also required for certain sales. The cost of a food handler license is based on the gross annual food sales and ranges from \$77 for establishments with gross annual food sales of less than \$50,000 to \$2,001 for establishments with gross food sales of over \$25 million. Producers may sell eggs directly from their farm to individual customers without meeting any licensing, registration, or inspection requirements. Producers may also sell eggs at farmers' markets without licensing or registration, but the eggs must be candled, labeled with the producer's name and address and kept at a temperature of 45° F or colder. Producers with fewer than 3,000 hens may sell eggs to grocery stores, restaurants or other food businesses without a license if they register with the Minnesota Department of Agriculture (MDA). There is no fee for registration and no routine inspection of the producer, although MDA may inspect the premises if they receive a complaint about the producer.

Currently, Wisconsin egg handlers must hold a food processing plant (potentially hazardous foods category), with the license fee based on annual sales and ranging from \$95 for establishments with annual sales of less than \$25,000 to \$835 for food processors with annual sales of at least \$250,000. Wisconsin currently also requires egg producers who sell eggs directly to consumers at venues other than their farms, such as at a farmers' market, to hold a retail food establishment license. The fee for a retail food establishment license issued by DATCP ranges from \$45 to \$685, depending on the scope of the establishment and its total annual sales. Small egg producers typically pay \$45. If the retail sales occur in jurisdictions where local health agents are under contract with the department to conduct retail food establishment inspections, the fees may differ. This revision to ATCP 88 features exemptions from the food processing plant license requirement for producers who sell eggs from small flocks, and producers who sell only nest-run eggs to egg handlers. This approach is consistent with that taken in neighboring states to minimize regulatory costs for small-scale direct-sale egg producers.

USDA grading standards are adopted in each of our neighboring states and those standards generally require that eggs sold to retailers must be Grade B or better. Illinois, Iowa, and Minnesota require candled eggs to be stored at 45° F or

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colder. Michigan requires eggs to be held and transported at no more than 45° F ambient temperature beginning 36 hours after the time of laying. Illinois requires nest-run eggs to be held at 60° F or less at all times. Since temperature control is an essential means of protecting the public from egg-borne illnesses, the Wisconsin rule requires eggs handled by licensed operators to be kept at 45° F or colder before and after packing and during transport, and 41° F or colder for retail sale. Illinois, Iowa and Minnesota require record-keeping associated with graded-egg sales and retention of these records for varying lengths of time. Wisconsin's rule is consistent with neighboring states in this regard.

17. Contact Name

Pete Haase, Director-Bureau of Food Safety and Inspection

18. Contact Phone Number

608 224-4711

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Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)
Small egg producers. The rule is expected to benefit small egg producers and reduce the financial and regulatory burden of acquiring a food processing plant license.
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2. Summary of the data sources used to measure the Rule's impact on Small Businesses
Solicited input on the economic impact from the Wisconsin Poultry and Egg Industries Association.
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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?
- ☒ Less Stringent Compliance or Reporting Requirements
 - ☒ Less Stringent Schedules or Deadlines for Compliance or Reporting
 - ☒ Consolidation or Simplification of Reporting Requirements
 - ☒ Establishment of performance standards in lieu of Design or Operational Standards
 - ☒ Exemption of Small Businesses from some or all requirements
 - ☐ Other, describe:
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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses
The rule reduces the impact of meeting full-scale food processing plant regulations for egg producers with flocks of not more than 150 birds by exempting these small-scale egg producers from acquiring a food processing plant license if they sell eggs directly to consumers at farmers' markets, on egg-sales routes, or on the premises where the eggs are laid.
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5. Describe the Rule's Enforcement Provisions
The rule does not modify existing enforcement provisions related to egg handling, labeling, grading or sales. All food, dairy and state-inspected meat businesses are regulated under Chapter 97 of the Wisconsin Statutes. Enforcement provisions for these businesses are outlined in s. 97.72 and 97.73 and apply to both small and large businesses.
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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)
☐ Yes ☒ No
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